

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DASHON TAYLOR,

Plaintiff,

vs.

DAVID W. MANGENI, ET AL.

Defendants.

CASE NO. 1:20-CV-2219

JUDGE _____

**ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT BY
DEFENDANT FEDEX GROUND
PACKAGE SYSTEM, INC.**

**(JURY DEMAND ENDORSED
HEREON)**

Now comes Defendant FedEx Ground Package System, Inc. ("FedEx"), by and through undersigned counsel, and for its answer to Plaintiff's Amended Complaint hereby states the following:

FIRST DEFENSE

ANSWER TO OVERVIEW

To the best of FedEx's knowledge and belief, David W. Mangeni and/or DNM Express, Inc. were not operating under the authority of FedEx at the time of the accident that is the subject of this lawsuit, and therefore FedEx is without knowledge or information sufficient to answer the allegations set forth in the OVERVIEW paragraph of the Complaint. Further answering, FedEx denies all allegations of liability of FedEx set forth in the OVERVIEW paragraph of the Complaint.

ANSWER TO FIRST COUNT

1. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint and therefore denies the same.

2. Answering Paragraph 2 of Plaintiff's Amended Complaint, FedEx denies that David Mangeni and/or DNM Express, Inc. were operating a vehicle on behalf of FedEx at the time of the subject accident. FedEx further denies that it was the employer David Mnageni or DNM Express, Inc. FedEx is without knowledge or information sufficient to answer the remaining allegations set forth in Paragraph 2 of Plaintiff's Complaint.

3. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 3 of Plaintiff's Amended Complaint and therefore denies the same.

4. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 4 of Plaintiff's Amended Complaint and therefore denies the same.

ANSWER TO SECOND COUNT

5. With respect to the allegations contained in Paragraphs 1 through 4 of Plaintiff's Amended Complaint, this Defendant reavers each and every response, defense and/or denial previously set forth in their answer herein and incorporates the same as if fully rewritten herein.

6. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 6 of Plaintiff's Amended Complaint and therefore denies the same.

7. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 7 of Plaintiff's Amended Complaint and therefore denies the same.

8. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 8 of Plaintiff's Amended Complaint and therefore denies the same.

ANSWER TO THIRD COUNT

9. With respect to the allegations contained in Paragraphs 1 through 8 of Plaintiff's Amended Complaint, this Defendant reavers each and every response, defense and/or denial previously set forth in their answer herein and incorporates the same as if fully rewritten herein.

10. Defendant denies the allegations contained in Paragraph 10 of Plaintiff's Amended Complaint.

ANSWER TO FOURTH COUNT

11. With respect to the allegations contained in Paragraphs 1 through 10 of Plaintiff's Amended Complaint, this Defendant reavers each and every response, defense and/or denial previously set forth in their answer herein and incorporates the same as if fully rewritten herein.

12. Defendant denies the allegations contained in Paragraph 12 of Plaintiff's Amended Complaint.

13. Defendant denies the allegations contained in Paragraph 13 of Plaintiff's Amended Complaint.

14. Defendant denies the allegations contained in Paragraph 14 of Plaintiff's Amended Complaint.

15. Defendant denies the allegations contained in Paragraph 15 of Plaintiff's Amended Complaint.

ANSWER TO FIFTH COUNT

16. With respect to the allegations contained in Paragraphs 1 through 15 of Plaintiff's Amended Complaint, this Defendant reavers each and every response, defense and/or denial previously set forth in their answer herein and incorporates the same as if fully rewritten herein.

17. Defendant denies the allegations contained in Paragraph 17 of Plaintiff's Amended Complaint.

ANSWER TO SIXTH COUNT

18. With respect to the allegations contained in Paragraphs 1 through 17 of Plaintiff's Amended Complaint, this Defendant reavers each and every response, defense and/or denial previously set forth in their answer herein and incorporates the same as if fully rewritten herein.

19. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 19 of Plaintiff's Amended Complaint and therefore denies the same.

20. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 20 of Plaintiff's Amended Complaint and therefore denies the same.

21. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 21 of Plaintiff's Amended Complaint and therefore denies the same.

22. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 22 of Plaintiff's Amended Complaint and therefore denies the same.

ANSWER TO SEVENTH COUNT

23. With respect to the allegations contained in Paragraphs 1 through 22 of Plaintiff's Amended Complaint, this Defendant reavers each and every response, defense and/or denial previously set forth in their answer herein and incorporates the same as if fully rewritten herein.

24. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 24 of Plaintiff's Amended Complaint and therefore denies the same.

25. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 25 of Plaintiff's Amended Complaint and therefore denies the same.

26. Defendant is without knowledge or information to form a reasonable belief as to the truth of the allegations contained in Paragraph 26 of Plaintiff's Amended Complaint and therefore denies the same.

27. FedEx denies all allegations set forth in Plaintiff's Amended Complaint that it does not expressly admit here.

AFFIRMATIVE DEFENSES

SECOND DEFENSE

28. Insofar as Plaintiff has failed to state a claim, Plaintiff is not entitled to the requested relief.

THIRD DEFENSE

29. Insofar as Plaintiff was negligent, contributorily negligent, comparatively negligent, and/or assumed the risk, Plaintiff is not entitled to the requested relief.

FOURTH DEFENSE

30. Insofar as Plaintiff failed to join necessary and/or indispensable parties, Plaintiff is not entitled to the requested relief.

FIFTH DEFENSE

31. Insofar as Defendants were not negligent, Plaintiff is not entitled to the requested relief.

SIXTH DEFENSE

32. Plaintiff's claims are barred, in whole or in part, by their lack of standing.

SEVENTH DEFENSE

33. Insofar as the injuries and damages alleged in Plaintiff's Amended Complaint were not proximately caused by the within action, Plaintiff is not entitled to the requested relief.

EIGHTH DEFENSE

34. Insofar as there was an intervening and/or superseding cause, Plaintiff is not entitled to the requested relief.

NINTH DEFENSE

35. Insofar as the injuries alleged in Plaintiff's Amended Complaint were caused by persons and/or entities not under the control of the Answering Defendant, Plaintiff is not entitled to the requested relief.

TENTH DEFENSE

36. Insofar as Plaintiff was negligent, Plaintiff is not entitled to the requested relief.

ELEVENTH DEFENSE

37. Insofar as the injuries alleged in Plaintiff's Amended Complaint were caused by the negligence of parties other than Defendants, Plaintiff is not entitled to the requested relief.

TWELFTH DEFENSE

38. Insofar as Plaintiff's claims are barred by the statute of limitations, laches, waiver and/or estoppel, Plaintiff is not entitled to the requested relief.

THIRTEENTH DEFENSE

39. Insofar as Plaintiff's claims are not recognized by any law or statute of Ohio, Plaintiff is not entitled to the requested relief.

FOURTEENTH DEFENSE

40. Defendant raised each and every affirmative defense applicable under Ohio's tort reform statutes, as same may be declared applicable in the instant matter.

FIFTEENTH DEFENSE

41. Insofar as Plaintiff's claims are barred by lack of personal jurisdiction, insufficiency of process and/or insufficiency of service of process, Plaintiff is not entitled to the requested relief.

SIXTEENTH DEFENSE

42. Insofar as Plaintiff's injuries were caused by a sudden emergency and/or an Act of God, Plaintiff is not entitled to the requested relief.

SEVENTEENTH DEFENSE

43. Defendant assert their rights to the "empty chair" defense pursuant to R.C. 2307.23.

EIGHTEENTH DEFENSE

44. Plaintiff's claims are barred as reduced by spoliation of evidence by persons or entities other than this Answering Defendant.

NINETEENTH DEFENSE

45. Insofar as there was no joint venture as between the Defendants, Plaintiff is not entitled to the requested relief.

TWENTIETH DEFENSE

46. Insofar as Plaintiff has failed to mitigate his damages, Plaintiff is not entitled to the requested relief.

TWENTY-FIRST DEFENSE

47. Insofar as Defendant did not act negligently, in a willful or wanton fashion, or with conscious disregard for the rights and safety of others, Plaintiff is not entitled to the requested relief.

TWENTY-SECOND DEFENSE

48. Insofar as Plaintiff's injuries were pre-existing, Plaintiff is not entitled to the requested relief.

Defendant expressly reserves the right to raise any affirmative defenses not related herein which may apply as discovery progresses in this matter.

WHEREFORE, having fully answered, Defendant FedEx Ground Package System, Inc. prays this Court dismiss Plaintiff's Amended Complaint with prejudice, retain jurisdiction to decide any motion for sanctions that may be filed, and award Defendant its costs, fees, attorney's fees and such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Christopher E. Cotter

Christopher E. Cotter (84021)

ccotter@ralaw.com

Amy K. Herman (92204)

aherman@ralaw.com

Roetzel & Andress, LPA

222 South Main Street

Akron, OH 44308

Direct: 330.849.6756

Telephone: 330.376.2700

Facsimile: 330.376.4577

ATTORNEYS FOR DEFENDANT
FEDEX GROUND PACKAGE
SYSTEM, INC.

JURY DEMAND

Defendant Fedex Ground Package System, Inc. hereby demands a trial by jury.

/s/ Christopher E. Cotter

Christopher E. Cotter (84021)

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing was filed electronically on this 30th day of September 2020. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Anna Christine
Andrew Trice
O'CONNOR, ACCIANI & LEVY LPA
10 West Broad Street, Suite 1170
Columbus, Ohio 43215
Phone: 614.545.7220
Fax: 888.225.1065
ac@oal-law.com
ajt@oal-law.com

ATTORNEYS FOR PLAINTIFF
DASHON TAYLOR

DNM Express, Inc.
c/o Erina Dallvo
1700 Dorchester Avenue
Dorchester, MA 02122
Defendant

Stephanie McCloud
Administrator of the Ohio Bureau of
Workers Compensation
30 W. Spring Street
Columbus, Ohio 43215

David W. Mangeni
284 Ware Street
Mansfield, MA 02048
Defendant

/s/ Christopher E. Cotter
*One of the Attorneys for Defendant FedEx Ground
Package System, Inc.*